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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,604	02/23/2004	Heather Gillis	1833K	8303
54964 7590 01/31/2007 TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ 15 HAMPSHIRE STREET MANSFIELD, MA 02048			EXAMINER THANH, QUANG D	
			ART UNIT 3771	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/31/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/784,604

Applicant(s)

GILLIS ET AL.

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19 and 23 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 7-15 is/are rejected.
- 7) ☒ Claim(s) 20-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>1/18/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/4/07 has been entered.
2. This office action is responsive to the amendment filed on 1/4/07. As directed by the amendment: claims 1, 2, 16-21 and 23 have been amended; claims 3, 6, 22 and 24-26 have been cancelled. Thus, claims 1-2, 4-5, 7-21 and 23 are presently pending in this application.

Claim Objections

3. Claim 20 is objected to because of the following informalities: "the strap first layer" should be replaced with – the first layer of the strap --.
4. Claim 21 is objected to because of the following informalities: "the body" should be replaced with – the foot sleeve --.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 4-5, 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rutt et al. (6,592,534) in view of Arensdorf et al. (5,676,641).

7. Re claims 1-2, Rutt discloses a compression apparatus (fig. 2) comprising: an expandable body (including 14/16 and 46 as shown in fig. 2) configured for disposal about a foot (fig. 1); a heel strap (including 48) extending from the body (fig. 2), the heel strap being configured to contour about a heel of the foot adjacent an ankle (fig. 1), wherein the heel strap is integrally connected to the body (fig. 2) and has a first layer 52/54 (fig. 4, col. 4, lines 27-40) configured to engage an outer surface of the foot adjacent the ankle, a second layer 24 and a third cushion layer 50 disposed between the first and second layer (best seen in fig. 4) ; except that Rutt is silent regarding the heel strap having at least one segmented portion positioned along the strap. However, Arensdorf teaches a heel strap 34 that has segmented portions 48, 72 and 50 positioned along the strap (best seen in fig. 5) such that when the strap is wrapped around the user's foot (fig. 3) it would provide rigidity to the medial and lateral sides of the ankle to prevent excessive inversion and eversion during use (col. 1, lines 10-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Rutt's reference, to include segmented

portions positioned along the strap, as suggested and taught by Arensdorf, for the purpose of providing rigidity to the medial and lateral sides of the ankle so that the device can also serve as a splint in order to prevent excessive inversion and eversion during use (col. 1, lines 10-51).

8. Re claims 4-5 and 7- 15, Rutt discloses the body includes the first layer 42 (fig. 3) and the second layer 24 (fig. 3); the third cushion layer 50 is disposed within the first layer 54 and the second layer 24 such that the first layer and the second layer are configured to provide a barrier to the third cushion layer 50 (best seen in fig. 4); wherein the body includes a metatarsal strap 18 (fig. 2); wherein the first layer includes layer of a soft material 54 ("fabric material", col. 4, lines 38-39) and a flexible film 52 ("urethane film", col. 4, lines 35-37); wherein the third cushion layer 50 includes a foam material ("urethane foam", col. 4, lines 35-36); wherein the second layer 24 includes a flexible film (thin rayon-based fibrous material, col. 3, lines 54-60) and an outer surface having a loop material disposed therewith (fig. 2, col. 3, lines 59-61); wherein the second layer 24 has an outer surface including a loop material such that the metatarsal strap 18 includes hook elements 26 that are engageable with the loop material to mount the expandable body with the foot (figs. 1-2); wherein the body includes a metatarsal strap 18 having hook elements 26 (fig. 2) that are engageable with the loop material to mount the expandable body with the foot.

Allowable Subject Matter

9. Claims 16-19 and 23 are allowed.

10. Claims 20-21 would be allowable if rewritten to overcome the objections as set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed on 1/4/07 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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